

Title page, Content, etc.

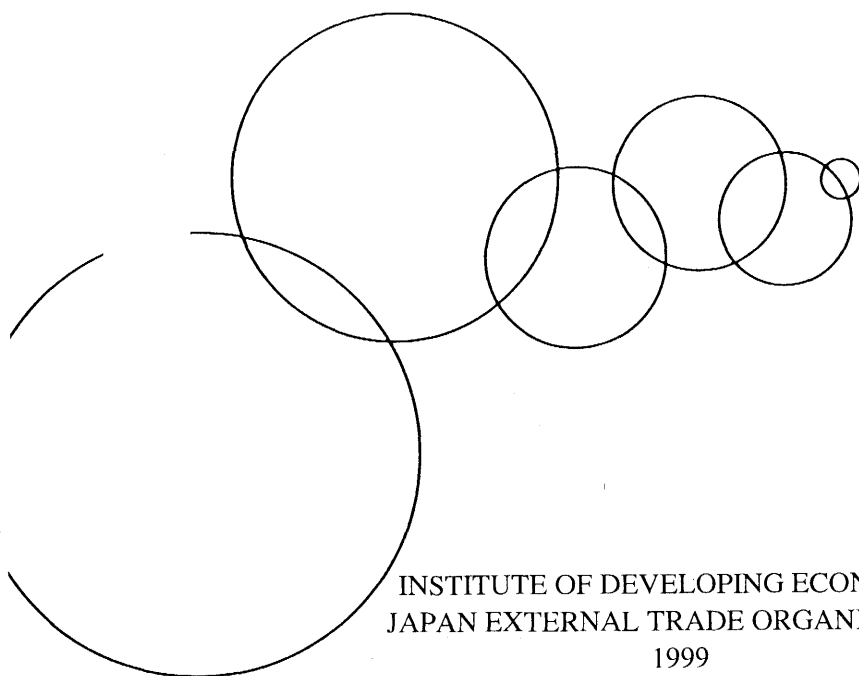
権利	Copyrights 日本貿易振興機構（ジェトロ）アジア 経済研究所 / Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) http://www.ide.go.jp
journal or publication title	Current Development of Laws in Indonesia
year	1999
URL	http://hdl.handle.net/2344/00018357



ASEDP NO. 51

CURRENT DEVELOPMENT OF LAWS IN INDONESIA

Edited by
KOESNADI HARDJASOEMANTRI
and
NAOYUKI SAKUMOTO



INSTITUTE OF DEVELOPING ECONOMIES
JAPAN EXTERNAL TRADE ORGANIZATION
1999

ASEDP Series No. 51

**CURRENT DEVELOPMENT OF LAWS
IN INDONESIA**

Edited by
KOESNADI HARDJASOEMANTRI
and
NAOYUKI SAKUMOTO

INSTITUTE OF DEVELOPING ECONOMIES
JAPAN EXTERNAL TRADE ORGANIZATION
TOKYO
1999

CONTENTS

Preface	ix
Chapter I Introduction – Koesnadi Hardjasoemantri and Naoyuki Sakumoto	
I. Legal Reform and the Socio-economic Law	1
II. Objectives	2
III. Outline and Discussion of Each Paper	4
IV. Conclusion	8
Chapter II Land Policy and the Law: The Implication of the Policy on the Granting of a Location Permit for Real Estate Development – Maria S. W. Sumardjono	
I. Introduction	9
II. The Functions of the Granting of a Location Permit and the Implication for Developers and Holders of the Right of Land	11
A. The Legal and Administrative Aspects of the Granting of a Location Permit ...	11
B. Legal Bases for the Granting of a Location Permit and the Right of Land for Real Estate Development	13
C. The Implication of the Granting of a Location Permit for Developers and Holders of Land Rights	15
III. Effectiveness of the Policy on Granting a Location Permit and its Supervision	19
A. The Coordination Aspect in Granting a Location Permit	20
B. The Supervision Aspect in Granting a Location Permit, Land Acquisition and Land Use	21
C. The Mechanism of the Supervision on a Location Permit, and the Acquisition and Use of Land	23
IV. Land Policies which Support the Granting of a Location Permit, and the Optimization of Land Use	27
V. Conclusion	29

Chapter III	Contract Law – <i>Sudargo Gautama</i>	33
I.	Principles of Adat Law	33
A.	No Distinction Between Real and Personal Rights	34
B.	No Distinction Between Movable and Immovable Property	34
C.	No Distinction Between Public and Private Law	34
D.	No Distinction Between Civil and Criminal Delicts	35
II.	The Scheme of Adat Contract Law	35
A.	Non-Consensual Nature of Adat Agreement	35
B.	Kinds of Adat Contracts	36
III.	Adat Law Not Suitable for International Commercial Transaction	37
IV.	“Obligations” and Contracts Under the Civil Code	37
A.	Elements of a Contract	38
B.	When is a Contract Created?	41
C.	Formalities	41
D.	Performance	42
E.	Stipulations for Third Persons	43
F.	Assignment (Cession)	44
G.	Default	44
H.	Assignment of Risk	47
I.	Termination	48
V.	Types of Contracts in General	51
A.	Conditional Contract	51
B.	Special Contracts	53
Chapter IV	Indonesian Development Under Economic Globalization: The Reform of Investment Law – <i>Erman Radjagukguk</i>	65
I.	Introduction	65
II.	Indonesian Development and Globalization	65
III.	Political, Economic and Legal Reforms	68
IV.	Investment Law at Present	73
A.	Joint Venture and Indonesianization of Equity	73
B.	Minority Shareholder Rights	85

	C. Business Opportunities for Foreign Investors	89
	D. Licensing	90
	V. The Need for Investment Law Reform	90
Chapter V	Development of Intellectual Property Laws in Indonesia – Bambang Kesowo	95
	I. General Background	95
	A. Copyright	90
	B. Patent	99
	C. Trademark	99
	II. IPR Laws: Principles and the Underlying Concept	100
	A. Copyright	102
	B. Patent	104
	C. Trademark	106
	III. Administration of IPR	108
	IV. Enforcement	110
Chapter VI	Labour Law and Policy in Indonesia – Naoyuki Sakumoto	123
	I. Introduction	123
	II. Historical Development of the Labour Law in Indonesia	124
	A. Slavery Period (<i>Zaman Perbudakan</i>) ...	124
	B. Forced Labour Period (<i>Zaman Rodi</i>) ...	125
	C. Penal Sanction Period (<i>Zaman Poenale Sanctie</i>)	126
	D. Japanese Colonial Period	127
	E. After-Independence Period	127
	III. Labour Policy in Indonesia	128
	A. Constitution	128
	B. Manpower Policy Reflected in the Present 1969 Basic Manpower Act	129
	C. GBHN and REPELITA	131
	IV. Present Labour Law System in Indonesia ...	133
	A. Definition and Sources of Labour Law .	133
	B. The Present Labour Law System in Indonesia	135
	C. Basic Features of the Present Labour Law System	147
	V. Proposed Manpower Act of 1997 and the Assessment	149

A.	Basic Structure of the Proposed 1997 Manpower Act	149
B.	Assesment of the Proposed Manpower Act	150
VI.	Lessons Learned from Indonesia and the Future Prospect	154
A.	Difficult Labour Situation and the Role of Law in Indonesia	154
B.	The Labour Policy and the Labour Law Policy	155
C.	Human Rights Abuse and Corruption Related to Labour Law	157
D.	The Future of the Original Labour Law in Indonesia	158
Chapter VII	The Development of Environmental Policies and Laws in Indonesia – Koesnadi Hardjasoemantri	163
I.	Introduction	163
II.	Environmental Policies	163
III.	Environmental Laws	168
A.	Pollution Prevention	172
B.	Hazardous and Toxic Waste	177
C.	Biodiversity	178
D.	Environmental Impact Analysis	182
E.	Economic Measures	184
F.	Participation in Environmental Management	186
G.	Environmental Education	192
H.	International Activities	194
I.	Environmental Management	198
IV.	Environmental Law Enforcement	200
A.	The Administrative Sanction	200
B.	The Civil Sanction	201
C.	The Penal Sanction	203
V.	Concluding Remarks	204
Chapter VIII	A Survey on the Influence of International Economic Policy on Indonesian Laws: Implementation and Problems – Hikmahanto Juwana	207
I.	Introduction	207

II. The Consistency of Law Reform with International Economic Policy	207
III. Reform to Comply with International Economic Policy	208
A. Reform on Outdated Laws	209
B. Law Reform to Conform with International Agreements	212
C. Law Reform to Improve the Investment Climate	213
D. Law Reform to Comply with International Issues	214
E. Law Reform as an Industrial Country ...	215
IV. Problems Posed by Law Reforms	216
A. Question of Enforcement	217
B. Conflicting Laws	217
C. Law as Sacred but Does Not Reflect the Desire of the People	218
D. Statutory Enactment that Requires Implementing Rules	218
E. Interpretation	219
F. Inappropriate Amendment Procedure ...	220
G. Incompatible Domestic Policy	222
H. Reform Due to External Pressure	222
I. Prolonged Economic Crisis	224
J. Skepticism about Globalization	224
V. Concluding Remarks	225
Biography of the Authors in Brief	235

© Copyright in 1999 by Institute of Developing Economies, Japan External Trade Organization
42 Ichigaya-Hommura-cho, Shinjuku, Tokyo 162-8442, Japan

All rights reserved. No part of this publication may be reprinted by any means without written permission from the Institute.

ISBN: 4-258-55051-5-C3033

Printed by Gadjah Mada University Press, Yogyakarta, Indonesia.

IDE-JETRO